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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**Position of the Constitutional Court of the Slovak Republic under  
the Amendment to the Constitution of the Slovak Republic  
No. 90/2001**

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**Conference on “International experience and perspectives of  
human rights protection before the Constitutional Court”**  
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I presented at similar seminar in 2000 a paper on the topic “The trends of the development of the constitutional judiciary in the Slovak Republic”. Today I would like to inform this Distinctive Audience on the extent of the changes in the position of the Constitutional Court of the Slovak Republic after entering into force of constitutional law no. 90/2001 Coll.

Before I mention the position of the Constitutional Court of the Slovak Republic itself I consider important to show some other significant changes in our Constitution which aimed at guaranteeing our further development in the democratic system.

We have to talk about the relation of the domestic law and international law, establishment of new mechanisms in presidential elections (direct election by citizens), dividing the competencies of the Head of the state in the transitional period, strengthening the self-government authorities (creating the second level of the self-government and strengthening the Supreme Audit Office).

After assessment of guarantees of the human rights protection, a new office has been founded – the public protector of rights. We are aware that our constitutional development has to reflect our international obligations and especially obligations on protecting of political, civil and social rights. The Amendment to the Constitution of the Slovak Republic (further Constitution) enables the citizen to react to the challenges which are represented by worldwide defence alignments and European economic groups.

Under Article 7 of the Constitution the Slovak Republic may, by its own discretion, enter into a state union with other states. A constitutional law, which shall be confirmed by a referendum, shall decide on the entry into a state union, or on the secession from such union.

This article of the Constitution made it possible by an international treaty, which was ratified and promulgated in the way laid down by a law, or on the basis of such treaty, transfer the exercise of a part of powers to the European Communities and the European Union. Legally binding acts of the European Communities and of the European Union shall have precedence over laws of the Slovak Republic. International treaties on human rights and fundamental freedoms and international treaties for whose exercise a law is not necessary, and international treaties which directly confer rights or impose duties on natural persons or legal persons and which were ratified and promulgated in the way laid down by a law shall have precedence over laws.

I think it is important to cite these provisions because they express the citizens’ will by the way of a constitutional law. They expressed the further direction and endeavour to integrate into the security and economic structures which provide our country prospects.

In this connection I would like to talk about the amendment to Art. 144, which laid down for the general courts in the performance of their function, that they shall be independent, and in their decision making shall be bound by the Constitution, by constitutional law, by international treaties and laws. This article amended the applicability of these treaties in the legal order of the Slovak Republic.

The Amendment to the Constitution deepened the competence of the Supreme Audit Office of the Slovak Republic and especially in the fields of the check of treatment of public resources or legal persons who are enterprising with resources of the state budget.

The Amendment introduced the institute of the public protector of rights, which is a new institute in our legal order. The independence of the judicial power has been enhanced by the institute of the judicial council, which consists of the President of the Supreme Court of the Slovak Republic, 8 judges elected and removed by the judges of the Slovak Republic. Three members of the judicial council are elected and removed by the National Council of Slovak Republic; another three members are elected and removed by the Government of Slovak Republic. The term of office of the members of the judicial council is five years. The competences are in personal issues (submitting of proposals for appointment, replacement and removing of judges) in disciplinary issues (founding disciplinary senates) in economy i.e. to express opinion on the draft budget for the courts in the Slovak Republic.

The amendment stipulated the number of the judges of the Constitutional Court of the Slovak Republic as 13 (before it was 10). The judges' term of office has been prolonged for 12 years without possibility of re-election. The judges of the Constitutional Court shall be appointed by the President of the Slovak Republic for a twelve-year term on a proposal of the National Council of the Slovak Republic. The National Council of the Slovak Republic shall propose double the number of candidates for judges that shall be appointed by the President of the Slovak Republic. A judge of the Constitutional Court may resign from his or her office by written notice addressed to the President of the Constitutional Court.

The President of the Slovak Republic shall recall a judge of the Constitutional Court: On the basis of a final condemning judgement for a wilful criminal offence, or on the basis of disciplinary decision made by the Constitutional Court for a conduct which is incompatible with holding the office of a judge of the Constitutional Court; further on if the Constitutional Court has announced that the judge does not participate in proceedings of the Constitutional Court for over one year, or if he or she is not eligible for the National Council of the Slovak Republic.

The judges of the Constitutional Court shall hold their offices as a profession. The performance of this profession shall be incompatible with the post in another body of public authority, with public service relationship, with employment, with the similar labour relation, with an entrepreneurial activity, with membership in governing or control body of a legal person, which pursues an entrepreneurial activity or with another economic or gainful activities apart from the administration of his or her own property, and scientific, pedagogical, literary or artistic activity.

The Constitutional Court shall decide in plenary session on the following issues: The President's office has become vacant for the reasons of health conditions of the incumbent President (Art. 105 (2)), prosecution of the President for a wilful infringement of the Constitution or for high treason (Art. 107), conformity of laws with the Constitution, constitutional laws and international treaties (Art. 125 (1a)), conformity of government regulations, generally binding legal regulations of Ministries and other central state administration bodies with the Constitution, with constitutional laws, with international treaties (Art. 125 (1b)), whether the subject of a referendum to be declared is in conformity with the Constitution or constitutional law (Art. 125b (1)), on conformity of negotiated international treaties with the Constitution and constitutional laws (Art. 125a (1)).

The plenary session of the Constitutional Court shall give an interpretation of the Constitution or constitutional law if the matter is disputable (Art. 128), before it was decided in a three-member senate.

The Constitutional Court shall decide whether the election of the President of the Slovak Republic, the elections to the National Council of the Slovak Republic, and the elections to local self-administration bodies have been held in conformity with the Constitution and the law. It shall decide on complaints against the result of a referendum and complaint against the result of a plebiscite on the recall of President of the Slovak Republic too.

The Constitutional Court shall decide whether a decision dissolving a political party or movement or suspending political activities thereof is in conformity with the constitutional laws and other laws.

The Constitutional Court shall decide on a prosecution by the National Council of the Slovak Republic against the President of the Slovak Republic in matters of wilful infringement of the Constitution or treason.

The Constitutional Court shall decide on whether a decision on declaring an exceptional state or an emergency state and other decisions connected to this decision were issued in conformity with the Constitution and constitutional law (Art. 129 subsections (2) – (6) of the Constitution).

Under these provisions the decisions of the Constitutional Court are binding for all the authorities of the public power and concerned natural and legal persons. The appropriate authority of the public power shall guarantee the execution of these decisions without any delays. Details shall be defined by law.

The judges of the Constitutional Court may be prosecuted and held in a pre-trial detention only with assent of the Plenary session of the Constitutional Court.

The Constitutional Court shall give its assent to the criminal prosecution or a pre-trial detention of a judge and of the General Prosecutor. The Constitutional Court shall convene disciplinary proceedings regarding the Chief Justice of the Slovak Republic, the Deputy Chief Justice of the Slovak Republic and the General Prosecutor (Art. 136 (2) and (3) of the Constitution).

If the Constitutional Court refuses its consent, the prosecution or the pre-trial detention shall be precluded for the duration of the function of a Constitutional Court judge, the function of a judge or the function of the General Prosecutor.

The plenary session shall decide on disciplinary measures against a judge for a conduct which is incompatible with holding the office of a judge of the Constitutional Court, and on announcement that the judge does not participate in proceedings of the Constitutional Court for over one year (Art. 138 (2) b) and c).

The plenary session shall decide on the unification of the senates' legal opinions, on regulation of internal relations and on the draft budget of the Constitutional Court.

The Constitutional Court shall decide on other matters in senates of three members. A senate shall decide by absolute majority of its members Art. 131 (2) of the Constitution.

By strengthening the self-government authorities there has been created the second level of the self-government bodies.

The elections to the higher territorial units have taken place recently so the regional parliaments have also been created. The next step will be the delegation of wide-ranged competences onto self-government authorities in all activities of the state administration.

I have shown this fact because I want to make clear the provision of Art. 127a of the Constitution under which: The Constitutional Court shall decide on complaints of the bodies of territorial self-administration against unconstitutional or unlawful decision or against other unconstitutional or unlawful action into the matters of self-administration, save another court shall decide on its protection.

If the Constitutional Court allows a complaint of a body of territorial self-administration, it shall hold:

- in what lies the unconstitutional or unlawful decision or other unconstitutional or unlawful action into the matters of self-administration;
- which constitutional law or law has been infringed;
- by which decision or action this infringement took place.

The Constitutional Court shall cancel the challenged decision, or if the infringement of the right lay in an action different than in a decision, it shall prohibit continuing of infringement of the right and shall order, if it is possible, to reinstate the status before the infringement.

The petitioners in this type of proceedings are the self-government authorities. In case of municipal corporation it is the mayor and the municipality.

The Amendment to the Constitution has introduced the preventive review of constitutionality to the legal order of the Slovak Republic. This is an abstract review of constitutionality with closely defined subject (subject of referendum) and with one possible petitioner (the President of the Slovak Republic).

The Article 125b of the Constitution that has introduced this competence of the Constitutional Court relates to Art. 95 under which: The President of the Slovak Republic may, before declaring a referendum, submit to the Constitutional Court of the Slovak Republic a proposal for a decision on whether the subject of a referendum which shall be declared upon a petition of citizens or a resolution of the National Council of the Slovak Republic according to paragraph 1 is in conformity with the Constitution or a constitutional law.

From the submission date of the proposal of the President of the Slovak Republic to the date of effectuality of the decision by the Constitutional Court of the Slovak Republic, the term shall not lapse. The Constitutional Court shall decide within 60 days. If the Constitutional Court decides that the subject of the referendum is not in conformity with the constitution or constitutional law, the referendum shall not be declared. A referendum may also be used to decide on all crucial issues of the public interest. However, no issues of fundamental rights, freedoms, taxes, duties or state budget may be decided by a referendum.

It is likely that in these proceedings the interpretation of the concept “fundamental right and freedom” can cause to the Constitutional Court serious trouble.

The doubts of the President on the conformity of the referendum subject with the Constitution and constitutional laws does not require a contradiction between the President and the Parliament or petitioners committee but it is the President’s individual decision. The decision could be problematic if the review of the referendum subject could not achieve either in “pro” or “contra” an absolute majority of all the judges votes (i.e. 7 judges).

In such a case the responsibility on the issue whether the referendum questions are constitutional would lay on the President of the republic. Although there is a possibility that the Constitutional Court could also hold proceedings on the referendum results in proceedings on a new motion (Art. 129 (3) of the Constitution).

Another new type of the abstract review is the one under Article 125a: The Constitutional Court shall decide on the conformity of negotiated international treaties to which the assent of the National Council of the Slovak Republic is necessary with the Constitution and constitutional law. The President of the Slovak Republic or the Government may submit a proposal for a decision to the Constitutional Court prior to the presentation of a negotiated international treaty for discussion of the National Council of the Slovak Republic. The Constitutional Court shall decide on this motion within 60 days from its delivery. If the Constitutional Court holds in its decision that the international treaty is not in conformity with the Constitution or constitutional law, such international treaty cannot be ratified. The aim of this type of proceedings is to avoid situations that a negotiated international treaty, binding for the Slovak Republic, will contradict to the Constitution and constitutional laws. It is to avoid a situation that as consequences of fulfilment of some constitutional standards a state authority could violate an international contractual liability.

This competence of the Constitutional Court of the Slovak Republic includes those negotiated international treaties which require the consent of the National Council of the Slovak Republic. The National Council of the Slovak Republic approves prior to their ratification the validity of international treaties on human rights and fundamental freedoms, international political treaties, international treaties of a military character, international treaties from which a membership of the Slovak Republic in international organizations arises, international economic treaties of a general character, international treaties for whose exercise a law is necessary and international treaties which directly confer rights or impose duties on natural persons or legal persons (Art. 7 (4) of the Constitution).

The motion is not obligatory in this type of proceedings; it depends on the discretion of the President or the Government.

The Constitutional Court of the Slovak Republic decides (abstract review of the constitutionality) on the conformity of laws with the Constitution and constitutional law and negotiated international treaties.

The Constitutional Court shall commence proceedings upon a motion submitted by: at least one-fifth of all Members of Parliament, the President of the Slovak Republic, the Government of the Slovak Republic, a court, the Attorney General. The subject of a review can be government decrees, generally binding rules of Ministries and other central authorities of the state administration.

The Constitutional Court may review the conformity of generally binding rules (local authorities' decisions) and generally binding legal regulations issued by local authorities of the state administration.

After the Constitutional Court accepts a motion to start proceedings, it may suspend effectiveness of challenged legal regulations, their parts, or some of their provisions, provided that their further application would jeopardize the fundamental rights and freedoms, or considerable economic damage, or any other irreparable situation could result.

If the Constitutional Court holds by its decision that there is inconformity between legal regulations, the respective regulations, their parts or some of their provisions shall lose effect. The bodies that issued these legal regulations shall be obliged to harmonize them with the Constitution, with constitutional laws and with international treaties. If they fail to do so, these regulations, their parts or their provisions shall lose effect after six months from the promulgation of the decision.

The decision on conformity shall be promulgated as defined by law.

A significant change has occurred after amendment in the individual complaints of natural and legal persons. The Constitutional Court shall decide on complaints of natural persons or legal persons if they are pleading the infringement of their fundamental rights or freedoms, or human rights and fundamental freedoms resulting from the international treaty which has been ratified by the Slovak Republic and promulgated in the manner laid down by a law, save another court shall decide on protection of these rights and freedoms (Article 127).

The Constitutional Court competences have been strongly enlarged in a way that when the Court declares that a lawful decision, measure, or other encroachment violated some rights or freedoms it quashes such decision, measure, or other encroachment. In this case the Constitutional Court will quash the challenged ruling. If the violation of the right happened through a passivity of an authority the Constitutional Court can order to start proceedings in the concerned matter. It can also return the case for further proceedings or prohibit continued violation of this right and order, if possible, that the condition before the encroachment is reinstated.

The Constitutional Court may, by the decision by which it allows a complaint, award the one whose rights according to paragraph were infringed an adequate financial satisfaction (Art. 127 (3)).

The responsibility of the one who has infringed the rights or freedoms according to paragraph 1, for the damage or other injury shall not be affected by the judgement of the Court (Art. 127 (4)).

A complaint may be filed within a period of two months from the day of entering into force of the decision or from the day when the injunction is announced or other encroachment is communicated. This term for temporary injunction or for other encroachment shall be computed from the day when such a temporary injunction or other encroachment will be announced to the complainant knowledge.

During its proceedings the Constitutional Court follows the facts of the case found during the previous proceedings.

By running the two months period it shall be respected the decision of the courts or other state administration authority or self-government decision which entered into force and cannot be challenged in other courts.

For counting the time it is important when the complainant got the decision or when he/she learnt about facts evoking violation of the complainant fundamental rights and freedoms.

An advocate or a commercial lawyer shall represent the petitioner.

The two months time cannot be either eliminated or prolonged under the Constitutional Court Act.

The parties to the proceedings are the petitioner (complainant) and the state administration authority or self-government authority against which the complaint is addressed.

In proceedings on natural and legal persons complaints the senates of the Constitutional Court shall decide on merits of the case.

No appeal shall take place against Constitutional Court findings.

The new type of natural or legal persons complaint has enhanced the protection of fundamental rights and freedoms through the possibility to file a complaint not only against central and local state administration bodies and territorial self-government authorities but against state power bodies and natural and legal persons too upon which the state delegated some of its functions. The extent of the protection has been enlarged as well while to the fundamental rights and freedoms have been added rights and freedoms following from international treaties.

If the complainants withdraw their complaint the Constitutional Court shall stop its proceedings. If the proceedings however deal with especially serious violation of a fundamental right the Constitutional Court may decide that it does not allow the withdrawal of the complaint.

For decisions on merit it is important:

- to show which fundamental right or freedom has been violated;
- to quash a decision or measure which caused the violation;
- if the violation was caused by passivity, order to start proceedings;
- return the matter for further proceedings;
- prohibit continued violation of the fundamental right or freedom;
- order that the condition before the encroachment is reinstated;
- recognize reasonable financial redress if requested as non-material damage.

The concerned authority is bound by the Constitutional Court legal opinion.

As for a summary of the enhancement of the natural and legal persons' right to file individual complaints and their raised efficiency I would like to show some statistical data on the Constitutional Court agenda in 1st half of 2001 and 2002.

	<b>1st half 2001</b>	<b>1st half 2002</b>
Total number of motions	415	872
Motions settled by suspension	183	434
Number of decided complaints by the way of settlement:		
Findings	18	21
Rejected	129	202
Ceasing the proceedings	3	11
Refusal	-	1
Not complied with	2	-
Settled in other way	3	-
Total	155	235

Literature:

- Constitution of the Slovak Republic no. 460/1992 Coll. as amended by law No 90/2001 Coll.
- Act 38/1993 Coll. of the National Council of the Slovak Republic on the organisation of the Constitutional Court of the Slovak Republic, on the proceedings before the constitutional court and the status of its judges
- Drgonec J.: Ústava Slovenskej republiky, komentár k novelizácii ústavným zákonom č. 90/2001 Z.z. , Heureka 2001
- Alexander Bröstl – Ján Klučka – Ján Mazák: Ústavný súd Slovenskej republiky (Organizácia, proces, doktrína) Ústavný súd Slovenskej republiky Košice, 2001